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INTELLECTUAL PROPERTY LAW

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VIA E-MAIL

February 22, 2018

David Cvengros
Bishop & Heintz
400 West Front at Oak
P.O. Box 707
Traverse City, MI 49685-0707

Dear Mr. Cvengros,

This firm represents Mark Farner, original guitarist, vocalist and principle songwriter of the original Grand Funk Railroad. As you know, Mr. Farner is currently performing under the name "Mark Farner's American Band."

I understand that your clients have a trademark registration on "The American Band." However, after looking into this matter, I concluded that there was no evidence that your clients actually perform under the name "The American Band." They perform under the name "Grand Funk Railroad." Further, there is another band called "The American Band," that, per www.theamericanband.org was "founded in 1837 [and] is one of America's oldest civilian concert bands."

Next, in reviewing your client's registration, I note that it was initially refused as geographically descriptive and only allowed under Section 2(f) of the Lanham Act. Thus, "The American Band" is a weak trademark. As I'm sure you know, there is even a section of the TMEP dedicated to this point of law.¹

Finally, my client has applied for a registration on "Mark Farner's American Band." The application sailed through examination. The Examiner specifically stated "The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d)."

Most importantly, the application was published for opposition, and no objections were made. If your clients had an issue with the Mr. Farner's trademark, that would have been the

¹ TMEP, Section 1212.02(b): Section 2(f) Claim Is, for Procedural Purposes, a Concession That Matter Is Not Inherently Distinctive.



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time to bring it up. The statement of use has been accepted. We are expecting the registration number any day now.

In short, there is no issue here. There is no likelihood of confusion. Your clients are fortunate to have the Grand Funk Railroad name to work under. Everyone should move on and let Mr. Farner make a living playing the songs he wrote.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Eric Bjorgum". The signature is fluid and cursive, with the first letter of the first name being a large capital 'A'.

A. Eric Bjorgum

AEB/mlr
cc: Obi Steinman